UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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*Ex parte* BARRY H. SCHWAB and KINYA WASHINO

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Appeal 2007-0982
Application 09/886,685
Technology Center 2600

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Decided: June 14, 2007

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Before LEE E. BARRETT, JOSEPH L. DIXON, and JOHN A. JEFFERY, *Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-13 and 15-18. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## BACKGROUND

Appellants' invention relates to an integrated multi-format audio/video production system. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. An integrated multi-format audio/video production system, comprising:

a high-speed serial input for receiving an audio/video program having an input format and an input frame rate;

a serial-to-parallel converter in communication with the input for outputting the program onto a data bus;

a high-capacity read/write medium interfaced to the data bus for storing at least a portion of the audio/video program;

a format converter interfaced to the data bus for outputting the audio/video program with an output format and output frame rate, either or both of which may be different from the input format and input frame rate; and

wherein the input or output frame rate is 24 frames-per-second or any integer multiple or fraction thereof.

## PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

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|---|---|---|
| Shaw | US 6,356,945 B1 | Mar. 12, 2002 (filed Aug. 8, 1997) |
| Hung | US 6,542,198 B1 | Apr. 1, 2003 (filed Mar. 30, 1999) |

## REJECTIONS

Appellants filed a Terminal Disclaimer on Jul. 11, 2006, to obviate the double patenting rejection.

Claims 1-13 and 15-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Hung.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed Oct. 10, 2006) for the reasoning in support of the rejections, and to Appellants' Brief (filed Dec. 8, 2005) and Reply Brief (filed Dec. 4, 2006) for the arguments thereagainst.

## OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellants' Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellants and the Examiner. As a consequence of our review, we make the determinations that follow.

## 35 U.S.C. § 103

From our review of the Examiner's rejection, we find that the Examiner has set forth a proper initial showing, with respect to independent claim 1, to shift the burden to Appellants. We note that the claim limitation "wherein the input or output frame rate is 24 frames-per-second or any integer multiple or fraction thereof" is the main point of contention by Appellants.

The Examiner identifies at page 5 of the Answer that Shaw teaches the use of one (1) frame per second (fps) which is an integer fraction of 24 fps. Although Appellants argue that only integer multiple or integer fractions of thirty (30) fps are taught or suggested by either reference (Br. 5 and Reply Br. 1), we find no evidence to the contrary that one (1) fps is an integer fraction of both 24 fps and of 30 fps. Therefore, Appellants' argument concerning Shaw's use of 30 fps is unpersuasive since it is not commensurate with the scope of the claim language which clearly covers integer fractions of 24 fps. Since one (1) fps is taught at Shaw column 6, lines 23-26, we find that Shaw teaches all of the claimed limitations. *In re Meyer*, 599 F.2d 1026, 1031, 202 USPQ 175, 179 (CCPA 1979) (noting that obviousness rejections can be based on references that happen to anticipate the claimed subject matter).

With that said, we additionally conclude that it would have been obvious to one of ordinary skill in the relevant art at the time of the invention to have selected the rate of frames per second to be 24 fps as taught and fairly suggested by Hung at column 1 since that is disclosed to be the minimum rate at which still images are viewed by the human eye appear as continuous video. Therefore, the rate of 24 fps or higher would have been desirable. We find that Hung merely discusses an exemplary television display video at 30 fps for the sake of understanding. Appellants contend that Shaw teaches away from the use of 24 fps (Br. 4). We find no express teaching away from the use of the minimum rate of 24 fps as contended by Appellants.

While Appellants contend that Hung is merely teaching that 24 fps is the minimum fps at column 1, we note that Hung specifically recites 24 fps

in claims 6, 11, 16, and 20 of the patent. Therefore, we cannot agree with Appellants that Hung merely suggests 24 fps as a minimum, but rather Hung suggests the use of 24 fps and discusses 30 fps in the specific example. Therefore, finding no persuasive argument showing error in the Examiner's initial showing, we will sustain the rejection of independent claim 1 and independent claims 15, 16, and 18 which Appellants have grouped therewith. Similarly, finding no separate arguments for patentability, we sustain the rejection of dependent claims 2-13 and 17 with their respective independent claims.

## CONCLUSION

To summarize, we have sustained the rejection of claims 1-13 and 15-18 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

## AFFIRMED

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